



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA NO. 4689 OF 2023

IN

IB-102(ND)/2022

IN THE MATTER OF IB-102(ND)/2022:

Under Section 7 of the Insolvency & Bankruptcy Code, 2016.

M/s. Shimping Technology Pvt Ltd

...Financial Creditor

Versus

M/s. Foxdom Technologies Pvt Ltd

...Corporate Debtor

AND IN THE MATTER OF IA 4698 OF 2023:

Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016.

Mr. Shailendra Singh, Resolution Professional of Foxdom Technologies Pvt Ltd

...Applicant

Versus

Directorate Of Enforcement
5th Cross Road, Race Course,
Dehradun Sub Zonal Office-Uttarakhand-248001

...Respondent No. 1

ICICI Bank Ltd
Through Its Authorised Officer
9A Phelps Building Cannaught Place New Delhi-110001

... Respondent No. 2

Order Pronounced on 11.02.2025

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES

For the Applicant : Mr. M.S. Vishnu Shankar, Advocate.

For the RP : Adv Gautam Singhal & Adv Rajat Chaudhary

For the Respondent No.1 : Adv Zoheb Hossain ED Spl Counsel, Adv Vivek Gurnani Adv Kartik Sabharwal Adv Adhiraj Singh



For the Respondent : Adv Chandrashekhar A Chakalabbi and Adv G.
No.2 Anusha

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present application is being filed by the Resolution Professional of the Corporate Debtor under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") read with Rule 11 of National Company Law Tribunal Rules, 2016 seeking the following prayers:

"1. Allow the present application.

2. Issue directions to Respondents to remove the debit freeze on the bank Account No. "000705050228" of the corporate debtor and allow the applicant to operate the same.

And/Or

3. Pass any other or further directions as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice in favour of the applicant and against the Respondents and in the interest of justice"

2. Briefly stated the facts of the case as mentioned in the instant application, which are necessary for adjudication, are as follows:

i.) The Adjudicating Authority vide order dated 03.02.2023 admitted CP (IB) No. 102/ND/2022 and appointed the Applicant as Interim Resolution Professional.

ii.) Subsequent to the admission of the insolvency proceedings against the Corporate Debtor, moratorium as envisaged under Section 14 of the Insolvency and Bankruptcy Code, 2016 was imposed on the Corporate Debtor and the applicant started discharging its duties and functions as the Interim Resolution Professional of the Corporate Debtor.

iii.) In terms of Regulation 6(1) of IBBI Insolvency Resolution Process for Corporate Persons Regulations 2016, Public Announcement in Form A was made on 11.02.2023 in English Newspaper "Financial Express" and Hindi Newspaper "Jansatta" and the last date for submission was 20.02.2023.

iv.) The Applicant after his appointment as the Interim Resolution Professional obtained control over the bank accounts of the Corporate



Debtor including the bank account bearing No. 000705050228 maintained with ICICI Bank Limited at Branch situated at 9A Phelps Building Connaught Place New Delhi-110001.

- v.)** The RP constituted the CoC comprising the sole Financial Creditor and the First CoC meeting was held on 11.03.2023 in which the IRP was confirmed to act as RP.
- vi.)** The Applicant, in the third CoC Meeting, the Resolution Professional apprised the sole COC member that pursuant to publishing Form G, the applicant had not received any expression of interest and in view of the same, the Applicant is of the opinion that Form G should be published once again.
- vii.)** The applicant further apprised the sole CoC member about the status of bank accounts of the Corporate Debtor. The Applicant informed that the CIRP cost which was approved in the Second COC meeting has been debited in the ICICI bank account of the corporate debtor and all subsequent costs shall be deducted from ICICI bank account only. The Applicant also informed that as per the information provided by the bank executives, the ICICI bank account has an account balance of Rs. 19 lakhs.
- viii.)** The Applicant republished Form G on 29.06.2023 in Newspapers Financial Express (English) and Jansatta (Hindi). The last date for submission of Resolution plan was 07.07.2023.
- ix.)** Since in the CoC in its 3rd Meeting held on 02.06.2023, ratified the payment of Corporate Insolvency Resolution Process from the ICICI Bank A/c No. 000705050228 of the Corporate Debtor, the Applicant started making payments of Corporate Insolvency Resolution Process cost through cheque from the said bank account of the Corporate Debtor.
- x.)** On 11.07.2023, the Applicant came to know that the cheque issued by him from the aforesaid Bank A/c No. 000705050228 has been returned unpaid / dishonoured by ICICI Bank Ltd, Respondent No. 2.
- xi.)** The Applicant immediately contacted Mr. Asis Das, Relationship Manager, ICICI Bank Ltd to enquire about the reason for the



return/dishonour of cheque of the cheque issued by the applicant from the aforesaid Bank A/c No. 000705050228 of the Corporate Debtor. The Applicant was informed that the said account of the Corporate Debtor is frozen on the written instructions of Mr. Prem Singh Meena, Assistant Director, Directorate of Enforcement, Delhi Zonal Office 1, Government of India, New Delhi.

- xii.)** The Applicant sent an email dated 13.07.2023 to Respondent No. 2 requesting to provide the copy of the said letter received from ED subsequent to which the account of the corporate debtor has been blocked and also requested to initiate the process to unblock the account of the corporate debtor.
- xiii.)** Thereafter, when the Applicant did not receive any response from Respondent No. 2, the applicant again sent a reminder email to Respondent No. 2 on 17.07.2023. On receipt of said email dated 17.07.2023, Respondent No. 2 replied to the Applicant via email enclosing the copy of the letter received from ED that Respondent No. 2 is unable to unblock/unfreeze the account unless and until appropriate directions are received in this regard from the Tribunal. As per the facts stated in the letter dated 08.07.2023 received from Directorate of Enforcement, an investigation under Provisions of Prevention of Money Laundering Act, 2002 was going on and during the investigation a search was conducted at the premise located at S-138/1, School Block, Durga Mandir, Shakkarpur, Delhi on 08.07.2023 and during the course of search proceedings, the aforementioned bank account number of the corporate debtor maintained with the ICICI Bank was found. In view of this, the ED has prohibited all the debit transactions in the aforesaid account of the corporate debtor in terms of section 17(1A) of the Prevention of Money Laundering Act, 2002 and the same shall not be transferred or otherwise dealt with, without the permission of the Directorate.
- xiv.)** After following up with the ED, the Resolution Professional was also informed about the investigation and consequent debit freeze of the



account of the Corporate Debtor.

- xv.)** The Directorate of Enforcement, Respondent 1 herein, has also filed their Reply dated 06.01.2024.
- xvi.)** The Respondent No. 1 submitted that the Directorate of Enforcement the Cyber Crime Police Station, Dehradun, Uttarakhand Police registered an FIR No. 0030/21 dated 04.09.2021 against unknown persons. Section 120-B and 420 of IPC, 1860 invoked in the FIR are scheduled offence under the schedule of PMLA, 2002 and from the facts and circumstances of the case narrated above as ECIR/DNSZO/01/2023 dated 27.02.2023 has been recorded after recording the brief fact of the case. Further the search under Section 17 of PMLA had been conducted in this instant case on 08.07.2023 and some documents/ Accounts were seized/frozen after following due process of law.
- xvii.)** The Respondent No. 1 submitted that Jitendra Sharma is one of the accused of the said scam and he is the director of suspected shell companies namely M/s. Fenexa Technology Pvt. Ltd. currently known as M/s. Foxdom Technologies Pvt. Ltd. which is located in Delhi. Jitendra Sharma has been arrested by Uttarakhand Police in the instant matter. Therefore, when search was conducted on 08.07.2023 at premises of Jitendra Sharma, the said bank account details of Corporate Debtor were found and frozen vide punchnama dated 08.07.2023.
- xviii.)** The Respondent No. 1 further submitted that the Respondent No.1 filed Original Application bearing number 942/2023 on 31.07.2023 before the Adjudicating Authority, PMLA seeking retention of the records / property seized under sub-section (1) of Section 17 of PMLA and 02 bank accounts were frozen under subsection (1-A) of Section 17 of PMLA. The Corporate Debtor herein is Respondent No. 6 in the said Original Application filed before the Adjudicating Authority, PMLA.
- xix.)** The Respondent No.1 submitted that this Adjudicating Authority does not have the jurisdiction to entertain a challenge by the Resolution Professional seeking removal of debit freeze. The Respondent No.1 has placed reliance on the case of ***Kiran Shah vs. Enforcement Directorate***



[Company Appeal (AT) (Insolvency) No. 817/2021], wherein the Hon'ble NCLAT held that the NCLT is not empowered to decide the questions of law or fact falling under the purview of another authority under PMLA and directed the Corporate Debtor to approach 'Competent Forum' by pursuing its remedy under the 'Prevention of Money Laundering Act, 2002' to its logical end or any other 'Jurisdictional Forum' (other than the purview of I & B Code, 2016).

xx.) The Respondent further placed reliance on the judgement of the Hon'ble Supreme Court in **Embassy Property Developments Pvt. Ltd. vs. State of Karnataka & Ors. 2019 SCC OnLine SC 1542** wherein it was held that, the only remedy that is available to the Applicant herein is to approach the Ld. Adjudicating Authority, PMLA where the matter is presently sub-judice.

xxi.) The Respondent No.1 further submitted that the question of primacy of IBC over the PMLA has been considered and rejected by the Hon'ble NCLAT in the case of **Varrsana Ispat Limited versus Deputy Director of Enforcement (Company Appeal (AT) (Insolvency) No. 493 of 2018)**, vide judgment dated 02.05.2019. The Hon'ble NCLAT has held that Section 14 of the IBC is not applicable to proceedings under the Prevention of Money laundering Act, 2002. The same was also upheld by the Hon'ble Supreme court vide order dated 22.07.2019 wherein **Civil Appeal No. 5546 of 2019 being Varrsana Ispat Ltd vs. Deputy Director, Directorate of Enforcement**, preferred against the judgment of the Hon'ble NCLAT was dismissed.

xxii.) The Respondent No. 2 also filed its reply wherein it was submitted that they have no objection to defreeze the account of the Corporate Debtor provided they receive directions for the same from this Adjudicating Authority.

3. ANALYSIS AND FINDINGS:

i.) We have heard the learned Counsel for the parties and perused the material on record, including the relevant judicial precedents relied upon by the Learned Counsel.



- i.) The core issue for determination in the present case is whether the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016 (IBC) has the jurisdiction to direct the Directorate of Enforcement (ED) to defreeze the bank account of the Corporate Debtor (CD).
- iii.) It is the case of the Applicant that the Respondents be directed to defreeze the account of the Corporate Debtor and that the Applicant was discharging its duties and functions diligently but because of blocking/freezing the aforesaid bank account, the CIRP process is hampered and the same is affecting the interest of creditors, stakeholders and employees of the Corporate Debtor.
- iv.) The Respondent No. 1, on the other hand, has taken a stance that this Adjudicating Authority does not have the jurisdiction to entertain a challenge by the Resolution Professional seeking removal of debit freeze. Further, it has also been contended that the Moratorium under Section 14 of the Code is not applicable to proceedings under the Prevention of Money laundering Act, 2002.
- v.) The law is well settled as held by the Hon'ble Supreme Court in ***Embassy Property Developments Pvt. Ltd. vs. State of Karnataka & Ors. 2019 SCC OnLine SC 1542*** and by the Hon'ble NCLAT in ***Kiran Shah vs. Enforcement Directorate [Company Appeal (AT) (Insolvency) No. 817/2021]***, wherein it was held that the NCLT is not empowered to decide the questions of law or fact falling under the purview of another authority under PMLA only remedy that is available to the Applicant herein is to approach the Ld. Adjudicating Authority, PMLA where the matter is presently sub-judice.
- vi.) Further, the Hon'ble NCLAT in ***Varrsana Ispat Limited versus Deputy Director of Enforcement (Company Appeal (AT) (Insolvency) No. 493 of 2018)***, has held that Section 14 of the IBC is not applicable to proceedings under the Prevention of Money laundering Act, 2002 which was also upheld by the Hon'ble Supreme Court.
- vii.) The Prevention of Money Laundering Act, 2002, primarily focuses on preventing money laundering and recovering proceeds of crime, whereas



the Insolvency and Bankruptcy Code, 2016, is aimed at the resolution of Corporate Debtor. Accordingly, this Adjudicating Authority, deriving its jurisdiction from the provisions of the Code, lacks the authority to adjudicate upon an order issued by the Adjudicating Authority under PMLA or to direct the Enforcement Directorate to release the attachment.

viii.) In this regard we also take note of the decision of the Mumbai Bench of NCLT in **DSK Motors Pvt. Ltd. vs. Deputy Director Directorate of Enforcement I.A No. 1854/2020 In CP No.512/2019** wherein it was observed that:

“30. It is clearly understood that while the PMLA concentrates on preventing money laundering and to recover proceeds of crime, the IBC aims at insolvency resolution of the Corporate Debtor. Thus, this Tribunal, having derived its powers under the I&B Code, has no jurisdiction per se to decide on an order passed by the Adjudicating Authority under PMLA and to direct the ED to release attachment unless Section 32A of the Code is triggered.”

ix.) In light of the settled legal position and the provisions of the Code read with the Prevention of Money Laundering Act, 2002 (PMLA), we are of the considered view that this Adjudicating Authority does not have the power to issue directions to the ED to defreeze the account of the Corporate Debtor when the account was frozen as per the directions of the Adjudicating Authority under PMLA. The jurisdiction to deal with matters related to attachment and freezing of accounts under PMLA vests exclusively with the authorities designated under the said enactment.

x.) The Resolution Professional, if aggrieved by such freezing, is at liberty to seek appropriate remedies under the PMLA before the competent forum.

xi.) Accordingly, the present Application stands **disposed of**.
No order as to costs.

-Sd/-

ATUL CHATURVEDI
MEMBER (TECHNICAL)

-Sd/-

BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)